

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

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Director's Office

IN THE MATTER OF:

**A'HEARN PLUMBING AND
HEATING, INC.**
Hiawatha, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AQ-51

TO: Brad A'Hearn, Registered Agent
A'Hearn Plumbing and Heating, Inc.
255 Robbins Road
Hiawatha, Iowa 52233

I. SUMMARY

This administrative consent order is entered into between A'Hearn Plumbing and Heating, Inc., (A'Hearn) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a demolition project at the Stewart Elementary School in Washington, Iowa.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Marion Burnside
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8443

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess

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administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

A'Hearn neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. On March 9, 2007, Marion Burnside, DNR asbestos coordinator, visited the Washington Community School District (WCSD) as part of an outreach visit. While there were no violations observed, Mr. Burnside did observe several classrooms in Stewart Elementary School (school) with floor tile in poor condition. Mr. Burnside informed John Trier, WCSD's Building and Grounds supervisor, of the floor tiles. Mr. Trier was told that due to the condition of the tiles, they would be considered regulated asbestos material when the tiles were removed.

2. On April 27, 2007, DNR received an asbestos NESIAP notification from Affordable Hazards Removal, Inc. (Affordable) for an emergency removal of 172 square feet of asbestos containing floor tile in several class rooms at the school. This was the same floor tile that Mr. Burnside observed on March 9, 2007.

3. DNR received complaints from parents concerning floor tile removal at the school. On May 8, 2007, Mr. Burnside conducted a complaint investigation at the school and discovered that WCSD had hired Frank Baxter General Contractor, Inc. (Baxter) to conduct renovation work at the school. As part of this project, on May 5, 2007, Baxter removed a stage in an area of the school that was being renovated. The stage is a facility component. The load supporting structural member of the stage was removed. This is defined as demolition; therefore the removal required an asbestos NESHAP notification. Neither WCSD nor Baxter submitted a notification prior to demolition. On June 26, 2007, DNR issued a Notice of Violation letter to WCSD for its failure to submit an asbestos NESHAP notification for the removal of the stage. A Notice of Violation letter was also issued to Baxter for the same violation.

4. Sometime prior to July 7, 2007, Baxter hired A'Hearn as a subcontractor to remove pipes at the school. On July 17, 2007, A'Hearn informed Mr. Trier that it identified pipe insulation as ACM and requested Affordable to come and remove the material. Will Anders of Affordable arrived to make a cost assessment. During the assessment, Mr. Anders and Mr. Trier discovered pipe insulation already removed. In response to their inquiry, A'Hearn confirmed that it had to remove a portion of the pipe in order to install new pipes. Mr. Anders and Mr. Trier further discovered 150-200 feet of already removed pipe in the dumpster nearby, and reported the incident to the DNR.

5. On July 17, 2007, Marion Burnside conducted a complaint investigation at the school. Mr. Burnside observed that pipe sections were in the dumpster. Will Anders of Affordable, who was on site preparing to remove asbestos containing floor tile, had

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covered the dumpster with plastic and put signs on it warning of asbestos. Mr. Burnside observed that A'Hearn had removed approximately 150 linear feet of pipe with pipe wrap from the tunnels at the school. A'Hearn had placed the dry uncontained pipe wrap and pipes in the dumpsters outside of the school. Mr. Burnside collected two samples of the suspect material, a middle joint and a portion of the pipe, for asbestos content analysis. At the time of the inspection, no one from Baxter or A'Hearn was present at the school. Mr. Burnside did not speak to anyone from A'Hearn following the inspection.

6. On July 18, 2007, the DNR submitted the samples collected during the July 17 inspection to the University of Iowa Hygienic Laboratory for asbestos content analysis. On July 23, 2007, the DNR received the analytical results of the samples. The sample of the middle joint contained a regulated amount of asbestos – 20% chrysotile asbestos. The sample of the pipe portion also contained a regulated amount of asbestos – 10% chrysotile asbestos.

7. On September 12, 2007, the DNR issued a Notice of Violation letter to A'Hearn for several asbestos NESHAP violations. The letter cited the following violations: failure to notify of the pipe removal; failure to keep asbestos containing material adequately wet; failure to have a trained supervisor on site; and failure to properly dispose of the asbestos containing waste. Notice of Violation letters with the same violations were also sent to Baxter and WCSD.

IV. CONCLUSIONS OF LAW

A'Hearn neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. Proper and timely notification was not given prior to the removal of the pipes. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that A'Hearn was not in compliance with these provisions when the pipe removal project occurred.

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4. 40 CFR section 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. The asbestos-containing pipe was not removed from the facility prior to conducting a demolition operation. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(c)(4) states when regulated asbestos containing material has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. The sections of pipe that had been removed were not wrapped in a leak-tight wrap. The above facts indicate a violation of this provision.

6. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the pipe removal. The above facts indicate noncompliance with this provision.

7. 40 CFR 61.150(a)(1) states in order to properly dispose of the regulated asbestos containing material the material must be adequately wet, placed in labeled leak-tight containers or wrapping. The pipe sections were dry and not sealed in a leak-tight wrap or container. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and A'Hearn agrees to do the following:

1. A'Hearn shall pay a penalty of \$3,500.00. \$700.00 of the penalty shall be paid to the DNR within 30 days of the date the Director signs this administrative consent order. In lieu of payment of the remaining \$2,800.00, A'Hearn shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Washington County Conservation Board and asbestos training for A'Hearn's employees.

A'Hearn shall make a payment of \$1,400.00 to the Washington County Conservation Board within 180 days of the date the Director signs this administrative consent order. Once the payment is made, A'Hearn shall submit a receipt of payment to Kelli Book, attorney for the DNR.

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A'Hearn shall provide \$1,400.00 worth of asbestos training for its employees. The training shall be conducted by Mechanical Contractor's Association and shall be completed within 270 days of the date the Director signs this administrative consent order. Once the training has been completed, A'Hearn shall submit a summary of the training to Kelli Book, attorney for the DNR. The summary shall include the cost of the training, the number of employees who attended the training, and an agenda or syllabus of the training content.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$3,500.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal may have allowed A'Hearn to save time and money. However, any economic benefit A'Hearn received was minimal because the primary beneficiary of the economic benefit was WCSD. Therefore no economic benefit is being assessed.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. For these reasons, \$2,000.00 is assessed for this factor.

c. Culpability. A'Hearn has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. For these reasons, \$1,500.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of A'Hearn. For that reason, A'Hearn waives the right to appeal this administrative consent order or any part thereof.

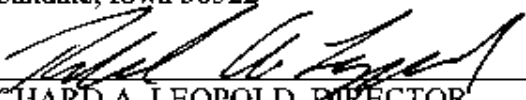
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.

Payment of Penalty shall be submitted to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment to the Washington County Conservation Board shall be submitted to:
Steve Anderson, Director
Washington County Conservation Education Center
2943 Highway 92
Ainsworth, Iowa 52201

Receipt of Payment and Class Summary shall be submitted to:
Kelli Book, Attorney
DNR
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
Nov., 2008



A'Hearn Plumbing and Heating, Inc.

Dated this 4th day of
November, 2008

Barb Stock (No asbestos file number); Kelli Book; Marion Burnside; DNR Field Office 6; EPA; VII.C.4